

Message Text

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S E C R E T SECTION 1 OF 2 USUN 01376

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NOFORN

FOR: T, NEA, L, & D/LOS

PASS DOD & CIA

FROM: USLOS DEL

E.O. 11652: XGDS-3

TAGS: PLOS

SUBJECT: LOS-STRAITS, HIGH SEAS, AND DISPUTE SETTLEMENT:
CONVERSATION WITH ISRAELI DEL

1. SUMMARY: ISRAELIS PLACING GREAT EMPHASIS ON MAINTENANCE OF HIGH SEAS STATES OF ECONOMIC ZONE AND RETENTION OF AT LEAST NON-SUSPENDABLE INNOCENT PASSAGE IN STRAITS CONNECTING HIGH SEAS TO TERRITORIAL SEA (STRAIT OF TIRAN AND GULF OF AQABA) THEY ARE VERY FIRM ON LATTER POINT. THEY, OF COURSE, SUPPORT U.S. OBJECTIVE OF FREE TRANIST IN STRAITS CONNECTING TWO PARTS OF HIGH SEAS (GIBRALTER AND BAB-EL-MANDEB), BUT AT LEAST AS A TACTIC, PREFER "NO DISTINCTION" AMONG STRAITS (I.E. TREAT TIRAN AND AQABA THE SAME WAY). THEY ARE VERY CONCERNED U.S. WILL AGREE TO "AMBIGUOUS TEXTS" WHICH BIG POWERS, BUT NOW SMALL POWER, COULD LIVE WITH. THEY DO NOT WISH TO BE BOUND

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TO COMPULSORY SETTLEMENT OF DISPUTES WITH STATES THAT DO NOT

RECOGNIZE THEM. END SUMMARY.

2. ON SEPARATE OCCASIONS, WE HAVE MET PRIVATELY AT ISRAELI REQUEST WITH AMB. NAJAR (HEAD OF DEL) AND AMB. ROSENNE IN EACH CASE THEY HAVE STRESSED PROBLEM OF GULF OF EILAT (AQABA), RED SEA, BAB-EL-MANDEB ROUTE.

A. REGARDING RED SEA, ISRAELIS EMPHASIZE THAT ALL OF RED SEA WILL BE ECONOMIC ZONE (AS WELL AS MEDITERRANEAN). IT IS THEREFORE IMPERATIVE TO MAINTAIN HIGH SEAS STATES OF ZONE. WE HAVE REASSURED THEM THIS IS OUR OBJECTIVE AS WELL. IN REFERENCE TO PLANNED INFORMAL MEETING CALLED BY USDEL OF SELECTED DELS TO DISCUSS QUESTIONS OF HIGH SEAS STATUS OF ECONOMIC ZONE, AMB NAJAR "PROTESTS" OUR FAILURE TO INVITE ISRAEL. WE EXPLAINED THERE WAS NO DELIBERATE EXCLUSION, THAT INVITES WERE CHOSEN FOR MAXIMUM TACTICAL EFFECT, AND THAT WE WERE INCLUDING A NUMBER OF ARAB OIL EXPORTERS BECAUSE THEY MAY SHARE OUR INTEREST IN THIS REGARD. WE SAID WE WOULD BE HAPPY TO HAVE ISRAEL ATTEND IF NAJAR FELT THIS WISE. HE SAID HE COULD NOT TAKE RESPONSIBILITY FOR DECISION, ANDND SAID WE MUST DECIDE. HE THEN WENT INTO LONG EXPLANATION OF ISRAELI CONCERN ABOUT DEFAC TO EXCLUSION FROM INTERNATIONAL NEGOTIATIONS. HE NOTED THERE WAS "NO PORBLEM" IN NEGOTIATION OF BARCELONA CONVENTION ON MEDITERRANEAN POLLUTION. COMMENT: SHOULD ARABS SEE ISSUE OF HIGH SEAS STATUS OF ECONOMIC ZONE AS AN ASPECT OF ISRAELI OBJECTIVES, COMBINATION OF ARAB OPPOSITION AND LATIN AMERICAN AND AFRICAN RESISTANCE FOR LOS REASONS, WILL BE IMPOSSIBLE TO OVERCOME. WE ARE RELYING ON CONSERVATIVE ARAB ATTITUDES ON LOS GENERALLY TO HELP IS ON THIS ISSUE IN THE 77.

B. REGARDING TIRAN AND AQABA: ISRAELIS SEEM TO BE SAYING THREE THINGS. FIRST, THEU WILL MAINTAIN POSITION OF NO DISTINCTION AMONG STRAITS. IN CONTEXT, THIS MEANS FREE TRANSIT FOR TIRAN AND AQABA, SECOND, USG SHOULD NOT REPEAT NOT CHANGE WHAT THEY PERCEIVE TO BE FORMAL US POSITION OF NO DISTINCTION. THE ISRAELIS SEEM TO INTERPRET THIS AS US SUPPORT OF A REGIME OF INTERNATIONAL WATERS MORE LIBERAL THAN INNOCENT PASSAGE. THEY FAVOR US SILENCE IN CONFERENCE

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ON PRECISE ISSUE IN CONFERENCE, BUT MUST RECOGNIZE THAT UNDER "SILENCE IS CONSENT TO EXISTING TEXT" RULE OF PROCEDURE, THIS IMPLIES A DIFFERENT RESULT. THIRD, ARTICLE 44 OF SINGLE NEGOTIATING TEXT MUST VE MAINTAINED AT ALL COST. ARTICLE 44 ESTABLISHES NON-SUSPENDABLE INNOCENT PASSAGE, NOT RPT NOT FREE TRANSIT (EG. NO OVERFLIGHT OR SUBMERGED PASSAGE), IN STRAITS CONNECTING HIGH SEAS TO TERRITORIAL SEA (TIRAN-AQABA). WHILE NOT EXPLICIT, IT SEEMS LIKELY

THAT ISRAELI ARE SEEKING COMMITMENT FROM US NOT TO ACCEPT CONVENTION IF ARTICLE 44 IS NOT RETAINED. NAJOR EMPHASIZED THE IMPORTANCE OF THE TREATY PROVISION ON THE ISSUE, NOT TO THE PRESENT SITUATION "SINCE WE CONTROL TIRAN". BUT TO THE FUTURE.

IN THE COURSE OF ISRAELI DESCRIPTION OF US POSITION ON TIRAN AND AQABA (ON WHICH WE DID NOT COMMENT), NAJAR MADE POINTS CONTAINED IN CONFIDENTIAL MEMO FROM ROSENNE. HE THEN GAVE US A COPY OF THE MEMO, THE TEXT OF WHICH IS SET OUT IN PARA 5 BELOW.

3. ISRAELIS SHARED OUR PERCEPTION THAT STRAITS DEBATE HAD GONE FAIRLY WELL. THEY NOTED THAT ARABS, WHILE UNIFIED ON TIRAN ISSUE, SEEMED ISOLATED IN ATTEMPT TO LALTER NON-SUSPENSION OF INNOCENT PASSAGE IN ARTICLE 44, AND THAT "SILENCE IS CONSENT IN EXISTING TEXT" RULE IS WORKING IN OUR FAVOR. WE SAID WE NOTED THE SAME THING ON ARTICLE 44, BUT WERE NOT SURE IT WOULD LAST, PARTICULARLY IF ISOLATED ARAB SHOWING IS DISCUSSED. ISRAELIS ALSO NOTED THAT EGYPT HAS NOT ALTERED ITS OPPOSITION TO FREE TRANSIT OT STRAITS CONNECTING TWO PARTS OF HIGH SEAS (BAB-EL-MANDEB, GIBRALTER) DESPITE SPECULATION THAT ITS CONCERN WITH PROTECTING CANAL TRAFFIC AND SPLIT IN ARAB GROUP WOULD LEAD TO SUCH CHANGE. FYI WE HAD HEARD PRECISELY SUCH SPECULATION FROM THE FRENCH. END FYI.

4. WITH RESPECT TO DISPUTE SETTLEMENT, ISRAELIS EXPRESSED CONCERN ABOUT COMPOSITION OF PROPOSED LOS TRIBUNAL. MOREOVER, EVEN IF PROCEDURES LIMITED TO ARBITRATION ISRAEL DID NOT RPT NOT WIDH TO ACCEPT COMPULSORY ARBITRATION WITH RESPECT TO STATES WITH WHICH IT HAS NO DIPLOMATIC RELATIONS, NAMELY THE ARABS. THEY
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REFERRED TO ISRAELI RESERVATION TO STATUTE OF ICJ. WE NOTED EXCEPTION TO COMPULSORY SETTLEMENT (IN ARTICLE 18(D) OF SNT) REGARDING DISPUTES IN RESPECT OF WHICH UN SECURITY COUNCIL IS EXERCISING FUNCTIONS UNLESS SECURITY COUNCIL OTHERWISE DECIDES, NOTED ISRAELI COMMENT TO US LAST YEAR THAT THIS FORMULATION GUARANTEED THAT SUBMISSION TO DISPUTE SETTLEMENT COULD BE VETOED, AND SAID WE WERE RESISTING SOME EUROPEAN PRESSURES TO REVERSE ARTICLE SO THAT STOPPING DISPUTE SETTLEMENT PROCEDURES WOULD REQUIRE POSITIVE SECURITY COUNCIL DECISION. ISRAELIS SAID ARTICLE SHOULD NOT BE REVERSED, BUT SAID THIS IS NOT ENOUGH, AS "WE MUST MOUNT MAJOR CAMPAIGN TO PERSUADE US TO EXERCISE VETO." WHAT THEY SEEK IS SOME LANGUAGE THAT PRECLUDES DISPUTE SETTLEMENT WITH ARABS EXCEPT BY SPECIAL AGREEMENT BETWEEN THEM.

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ACTION SS-25

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S E C R E T SECTION 2 OF 2 USUN 1376

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TEXT OF "CONFIDENTIA" MEMO OF 29 MARCH 1976 FROM
ROSENNE TO MAJAR:

YOUR ATTENTION IS DRAWN TO THE FOLLOWING, WHICH MAY
BE OF USE IN CONVERSATIONS WITH THE AMERICANS AND OTHERS:

(1) THE U.S. GOVERNMENT STATEMENT OF 11 FEBRUARY
1957 CONTAINED THE FOLLOWING PASSAGE:

WITH RESPECT TO THE GULF OF AQABA AND ACCESS
THERE TO, THE UNITED STATES BELIEVES THAT THE
GULF CONSTITUTES INTERNATIONAL WATERS AND NO
NATION HAS THE RIGHT TO PREVENT FREE AND INNO-
CENT PASSAGE IN THE GULF AND THROUGH THE
STRAITS GIVING ACCESS THERETO.
WHITEMAN, DIGEST OF INTERNATIONAL LAW, VOL. 4
(1965 PAGES 233, 373, 465.

(2) SECURITY COUNCIL RESOLUTION 242 (1967) STATES:

AFFIRMS FURTHER THE NECESSITY (A) FOR GUARANTEE-
ING FREEDOM OF NAVIGATION THROUGH INTERNATIONAL
WATERWAYS IN THE AREA.

(3) ARTICLE 14 OF THE DOCUMENT ENTITLED, UNITED

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STATES-ISRAELI ASSURANCES SIGNED ON 1 SEPTEMBER
1975 BY ALLON AND KISSINGER STATES:

14. IN ACCORDANCE WITH THEE PRINCIPLE OF FREEDOM
OF NAVIGATION ON THE HIGH SEAS AND FREE AND
UNIMPEDED PASSAGE THROUGH AND OVER STRAITS
CONNECTING INTERNATIONAL WATERS, THE UNITED
STATES GOVERNMENT REGARDS THE STRAITS OF BAB-
EL-MANDEB AND THE STRAIGHT OF GIBRALTAR AS
INTERNATIONAL WATERWAYS. IT WILL SUPPORT ISRAEL'S
RIGHT TO FREE AND UNIMPEDED PASSAGE THROUGH SUCH
STRAITS. SIMILARLY, THE UNITED STATES GOVERN-
MENT RECOGNIZES ISRAEL'S RIGHT TO FREEDOM OF
FLIGHTS OVER THE RED SEA AND SUCH STRAITS AND
WILL SUPPORT DIPLOMATICALLY THE EXERCISE OF
THAT RIGHT. TEXT IN HEARINGS BEFORE THE COMMITTEE
ON FOREIGN RELATIONS OF THE UNITED STATES SENATE,
94TH CONGRESS, ON MEMORANDA OF AGREEMENTS BE-
TWEEN THE GOVERNMENTS OF ISRAEL AND THE
UNITED STATES, 6 AND 7 OCTOBER 1975, P 249
AT 251.

(4) TO BE NOTICED IS THAT THE EXPRESSION "INTERNA-
TIONAL WATERS" IS USED BOTH IN THE 1957 STATEMENT
REGARDING THE GULF OF AQABA, AND IN THE INTRODUCTORY
PART OF ARTICLE 14 OF THE 1975 AGREEMENT. THE
EXPRESSION "INTERNATIONAL WATERWAYS" IS USED IN
THE SECURITY COUNCIL RESOLUTION 242 AND IN ARTICLE
14, THERE SPECIFICALLY IN RELATION TO THE STRAITS
OF GIBRALTAR AND BAB-EL-MANDEB. THE EXPRESSION "FREE"
PASSAGE IS TRADITIONALLY USED IN RELATION TO THE HIGH
SEAS AND STANDS IN OPPOSITION TO THE MORE RESTRICTED
EXPRESSION "INNOCENT PASSAGE" TRADITIONALLY LIMITED
TO THE TERRITORIAL SEA. IN MRS. MEIR'S STATEMENT
BEFORE THE GENERAL ASSEMBLY ON 1 MARCH 1957 THE HYBRID
EXPRESSION "FREE AND INNOCENT PASSAGE" WAS DELIBER-
ATELY USED AFTER CAREFUL DRAFTING IN THE STATE DE-
PARTMENT, AND THIS IS REFLECTED IN THE UNITED STATES
STATEMENT REGARDING AQABA OF 11 FEBRUARY 1957 AND
IN OTHER CONTEMPORARY DOCUMENTS.

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(5) ON THE BASIS OF THE FOREGOING, IT COULD BE

ARGUED THAT ARTICLE 44 OF THE INFORMAL SINGLE
NEGOTIATING TEXT DOES NOT, AS FAR AS CONCERNS
AQABA, CONFORM TO THE U.S. UNDERTAKING OF 1957,
OR WITH THE INITIAL WORDS OF ARTICLE 14 OF THE
1975 TEXT."

FYI USDEL COMMENT: ISRAELIS PLACED GREAT STRESS ON U.S.
STATEMENT THAT THE GULF CONSTITUTES "INTERNATIONAL
WATERS". USDEL NOTES THAT WITH A 12-MILE TERRITORIAL SEA,
THERE WOULD BE NO RPT NO HIGH SEAS IN THE
GULF, ALTHOUGH COASTAL STATES ARE NOT COMPELLED TO
EXTEND THEIR TERRITORIAL SEAS. ISRAELIS DID NOT REFER
TO THE QUESTION OF A 3 VERSUS 12 MILE LIMIT, BUT RATHER
TO THE FACT THAT A NUMBER OF STATES BORDER AQABA, THERE-
FORE IT IS NOT JUST A BAY, BUT INTERNATIONAL WATERS.
THIS MAY BE A REFERENCE TO FACT THAT ARTICLE 7 OF EXIST-
ING TERRITORIAL SEA CONVENTION (AND LOS CONFERENCE SNT
ARTICLE 9) ONLY APPLIES TO BAYS OF A SINGLE STATE, IM-
PLYING THAT MULTI-STATE BAYS CANNOT BE ENCLOSED AS IN-
TERNAL WATERS. ANY OTHER RESULT COULD AFFECT
NOT ONLY AQABA, BUT OTHER ENCLOSED SEAS (EG. THE
BLACK, BALTIC, RED, AND EVEN MEDITERRANEAN SEAS) END FYI.
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